IN THE HIGH COURT OF DELHI AT NEW DELHI

WP(C) No. 4412/2005

Judgment reserved on: 2.8.2007

Judgment delivered on: September , 2007

Smt. Swapna Sood
W/o Shri Sunil Sood,
R/o 1/16, First Floor,
Old Rajinder Nagar,
New Delhi ..... Petitioner

Through: Mr. M.A. Niyazi with
Ms. Anamika Gahi, Advs.

versus

1. Directorate of Education
Vikas Bhawan, I.T.O.
New Secretariat,
Delhi

2. Army Welfare Education Society (AWES)
Through its Director
HQ Delhi Area,
Delhi Cantt – 110 010

3. Army Public School
Through its Principal
Ridge Road, Dhaula Kuan
New Delhi – 110 010 ..... Respondents

Through: Ms.Avnish Ahlawat with
Nidhi Gupta, Ms. Simran and

Advs.

Ms. Latika Chaudhary, for R-1.

R-

Mr. Kartik Anand, Adv. for 2.

Mr. R.R. Ojha, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J.

By way of present writ petition, the petitioner has sought quashing of interview dated 17th February, 2005, held or the appointment of Post Graduate Teacher (PGT) (Chemistry) against regular post in respondent No. 3 school. The petitioner has further sought direction for regularization of her appointment as PGT (Chemistry) in respondent No. 3 school on the basis of Combined Screening Board (CSB) Exam held in the year 2004 and interview in May, 2004.

Brief facts necessary for the decision of the present petition in nutshell, inter alia, are that the petitioner was appointed initially on contract basis by respondent No. 3 w.e.f. 14th July, 2003 to 30th April, 2004. As per the rules/procedure/guidelines formulated by respondent No. 2 for seeking appointment of a regular teacher against the post of TGT/PGT, the requirement is to clear the test of Combined Screening Board and after qualifying such test the candidates are given score cards. It is not in dispute that the petitioner had qualified the written test of CSB and she was issued a score card, which has been placed by the petitioner on record. This score card indicates that serial number of the petitioner is 41866 and it further shows that the petitioner had qualified written exam for Combined Screening Board held in the year 2004. This screening card was issued in favour of the petitioner on 27th January, 2004. When a person qualifies the test whether CSB or LSB, that makes him or her eligible to appear for the final interview either for the post of TGT or PGT. The petitioner stated that she was called for interview by the Selection Committee constituted by respondent No. 2 society for

her appointment against a regular vacancy of PGT (Chemistry). The petitioner further stated that the interview of the petitioner was conducted as per the rules/procedures adopted by the Selection Committee, which comprised of the representative of the Chairman of the school, head of the school and expert in the subject besides other members. The petitioner further stated that the petitioner had duly qualified the said interview. The petitioner further stated that even after qualifying the interview the petitioner was not given any appointment letter, but was again appointed on contractual basis vide appointment letter dated 14th July, 2004 for a period of one year w.e.f. 1st July, 2004 to 30th June, 2005. When the said appointment was not given to the petitioner on the basis of her qualifying the said interview, she was told by the school that still the petitioner will have to qualify the Combined Screening Board Interview and only thereafter she will be considered for the appointment on the said post of PGT (Chemistry). With this impression in mind the petitioner kept on waiting for the CSB interview to be conducted by respondents No. 2 and 3. In the year 2005 CSB was held but the petitioner was not

called for the interview and she was informed that 12 candidates were called for interview by the selection board for selecting candidates for the post of PGT (Chemistry) available in the cluster of three schools of respondent No. 2 society. The petitioner was also intimated that percentage of the last candidate called for interview in the CSB by the selection board was 62.5%. Aggrieved with the said actions of respondent No. 2, the petitioner has preferred the present petition.

I have heard learned counsel for the parties at considerable length. The main thrust of argument of the counsel for the petitioner revolves around the selection of the petitioner against the regular post of PGT (Chemistry) after she was declared as successful by the Selection Committee. The counsel had drawn my attention to the letter dated 21st June, 2004 issued by respondent No. 2. This letter is a kind of covering letter, forwarding therewith, the result of the selected candidates for which the interview was held by the Selection Committee. This letter is addressed by respondent No. 2 to all the schools of their cluster and it states that appointment letters in terms of the said selection be issued in favour of the selected candidates as

per the terms and conditions laid in the same. The name of the present petitioner appears at serial No. 8 against the post of PGT (Chemistry). The same indicates that she was duly selected by the said Selection Committee. The counsel contended that once the petitioner was selected by the Selection Board and the society had given directions to all the concerned schools of their cluster, then as to why the appointment letter in terms of the said letter dated 21st June, 2004 was not issued to the petitioner. The counsel also contended that once the petitioner was selected against a regular post then where was the need to appoint the petitioner on contractual basis from 1st July, 2004 to 30th June, 2005. The counsel for the petitioner also contended that once the petitioner was selected against the said regular post of PGT (Chemistry), then, no fresh process of appointment on the said post as far as Army Public School, Dhaula Kuan is concerned, could have taken place. The counsel also contended that the said selection process in the year 2005 was illegally undertaken by respondent No. 2 with a mala fide intention to deprive the petitioner from the said post of PGT (Chemistry). The

counsel further contended that the mala fide intention of respondent No. 2 was apparent from the fact that a wrong information was rendered to the petitioner by stating that 12 candidates were called for the interview while the list of candidates, placed by the respondent on record showed that there were 15 candidates, who had participated in the interview. The counsel further contended that the petitioner was intimated that the last candidate, who was called for interview, possessed 62.5% marks, while Ms. Renu Aggarwal, who was shown at serial No. 13, scored 187 marks in the written examination out of total 350 marks, which approximately comes to 53% marks. Counsel also contends that the said candidate, who had secured 53% marks was not only permitted for the interview, but she was also recommended as one of the selected candidates.

Per contra, Mr. R.R. Ojha, counsel appearing for respondent No. 3 mainly contended that the reliefs as claimed by the petitioner in the present petition cannot be granted in her favour. Counsel contended that prayer (a) in which the petitioner has sought quashing of the interview dated 17th February, 2005 is not available to the

petitioner as the eligible candidates, who had secured the requisite laid down percentage of marks, were only called for interview and since for that particular interview the petitioner did not fulfill the eligibility criteria of scoring the requisite marks, therefore, the said relief of seeking quashing of the interview dated 17th February, 2005 cannot be held to be available to the petitioner. Prayer (b) is also not available to the petitioner as per the contention of the counsel for the respondent No.3. The counsel stated that the petitioner is seeking regularization on the post of PGT (Chemistry) without there being any appointment in her favour on the said post. The counsel also contended that the petitioner can only claim her right to participate in the process, but cannot claim any right to seek the appointment itself. The counsel also contended that even this Court cannot issue any such direction for appointment of a person unless such a person is so appointed by the concerned authorities. Counsel for the respondent stated that in the year 2004 there was only one candidate and there was only one vacancy in July, 2004 and that is why the petitioner was not given the appointment letter and that is the reason

for giving her another appointment letter on contractual basis.

Counsel appearing for respondent No. 2, Mr. Kartike Anand states that as far as the schools run by the Society are concerned, the society is bound by the provisions of the Delhi School Education Act and the Rules framed thereunder. Counsel further contended that as far as the selection process, which was undertaken by the society in the year 2005 is concerned, still the process for constituting a Selection Committee in compliance with the provisions of Rule 96 of the Delhi School Education Rules was to take place and, therefore, no finality could be attached to the result declared by the Selection Committee of CSB held in the year 2005. Counsel also contended that the petitioner had simply qualified the CSB written exam, but still she was required to undergo and qualify the final interview of the CSB and since the petitioner was not eligible as far as 2005 CSB was concerned having not scored the cut off marks, so she was not called for an interview.

Counsel for respondent No.2 has also placed reliance on the judgment reported in ***2002 VI AD (Delhi) 109 Smt. Asha Vij &***

Others vs The Chief of the Army Staff and Others in support of his argument that the writ petition filed by the petitioner is not maintainable against respondent No. 2 society under Article 12 of the Constitution of India as the society would not fall within the ambit of the expression "State".

Counsel for respondent No.2 society has further placed reliance on the following judgments in support of the contention that the society being registered under the Societies Registration Act and being neither controlled nor managed by the Government of India or a State Government, therefore, cannot be held to be State under Article 12 of the Constitution of India. Counsel for the respondent no.2 has placed reliance on the judgments mentioned below:

1. **UOI vs. Chote Lal & Anr. AIR 1999 SC 376**

2. **Asha Khosa vs. Chairman, Army Public School (SLP (Civil No. 6482/97).**

3. **Ram Lubhai vs. Secretary, MOD 2004 Lab IC 1319**

4. **Hem Chand vs. UOI, CWP No. 8308/2001, P&H HC (DB)**

5. **A.K. Upadhyaya vs UOI, CWP No. 23130/2004, ALL HC**

6. **K.C. Tewari vs. UOI, CWP No. 17380/1992, All HC.**

7. Nijmullah Ansari vs. UOI, WP (C) No. 6191/2005, Gauhati HC.

Besides placing reliance on the aforesaid judgments the counsel for respondent No.2 also contended that even if it is held that under Article 226 of the Constitution of India the society respondent No. 2 is amenable to the writ jurisdiction then the remedy of the petitioner does not lie under Article 226 of the Constitution of India on account of the fact that the service of the petitioner was contractual in nature and the same cannot be enforced by invoking writ jurisdiction of this Hon'ble Court. The counsel appearing for respondent No. 3, Mr. R.R. Ojha, Advocate, also seriously refuted the arguments of the counsel for the petitioner. Mr. Ojha contended that the petitioner has no right to be appointed on the post of PGT (Chemistry) as she has never qualified the CSB interview, which is a prerequisite for selecting a candidate to the aforesaid post. The counsel further contended that the petitioner was selected in the LSB interview conducted on 24th May, 2004 and on the same basis she was appointed again on a fixed tenure for a period w.e.f. 1.7.2004 to 30th June, 2005. As regards CSB

interview held on 17th February, 2005, the contention of the counsel was that the petitioner was rightly not allowed to participate in the said interview as she did not score the cut off marks of 62.5% as laid down by respondent No.2 society for drawing a fresh panel of candidates for the purpose of CSB interview. The counsel also contended that no selection as per the mandate of Rule 96 of the Delhi School Education Rules has taken place and, therefore, the petitioner cannot claim to have been legally and validly selected on the said post of PGT (Chemistry). Counsel contended that she was not appointed against the existing vacancy and she does not have any vested right for regularization of her service unless she is selected by the Selection Committee duly constituted by respondent No.2 under Rule 96 of the Delhi School Education Rules. The counsel for the respondent school also contended that since the petitioner had already accepted the contractual appointment for a temporary period of one year w.e.f. 1.7.2004 to 30.6.2005, therefore, the petitioner having acquiesced to her such appointment cannot now claim contrary to the same. The contention of the counsel for the

respondent school is that the petitioner has never challenged her said contractual appointment and once having accepted the same cannot turn around, and now claim appointment against a regular post without having been selected in accordance with Rule 96 of the Delhi School Education Rules. In support of his arguments counsel for respondent No. 2 placed reliance on the judgment reported in **JT 2003 (5) SC 144 Dr. (Mrs.) Chanchal Goyal vs. State of Rajasthan,** wherein the Supreme Court has held that unless the initial recruitment is regularized through a prescribed agency and the appointment is made on a regular basis, there is no scope of regularization. Counsel for respondent No. 3 also placed reliance on the judgment reported in **1963 (1996) DLT 150** entitled **Satya Prakash Vermani vs. Govt. of NCT of Delhi and Ors.** in support of the proposition that once the petitioner having accepted her appointment on the contractual basis for a temporary period then right to challenge the validity of such an order is barred by the doctrine of estoppel and waiver. Both the counsels appearing for the respondents also laid considerable emphasis on the self written letter

of the petitioner dated 16.2.2005 in which the petitioner had clearly admitted that she was yet to appear for CSB interview. In this letter the petitioner also made a request to the Principal of the school to allow her to appear in the CSB interview scheduled to be held on 17th February, 2005. Both the counsels also contended that in all 12 candidates were called for CSB interview for the vacancy of PGT (Chemistry) and these candidates were shortlisted on the basis of their respective merit in the CSB written exam and percentage of the last candidate called for interview was 62.5%. The petitioner who had secured 53% was, thus, not eligible to be considered for the CSB interview which was held on 17th February, 2005 and there was nothing wrong on the part of the respondents in not calling the petitioner for the CSB interview held on 17th February, 2005. Counsel for respondents No. 2 and 3 also contended that no relief can be given to the petitioner in terms of the prayers made in the present writ petition.

In prayer (a) the petitioner has sought writ of mandamus for quashing of interview dated 17th February, 2005 and in reply to this

prayer paragraph the contention of the counsel for the respondent No. 2 is that once the petitioner did not qualify the laid down criteria of scoring minimum percentage, therefore, the petitioner cannot seek quashing of interview dated 17th February, 2005 in which she was not eligible to participate. In prayer (b) the petitioner has sought directions against the respondents for her regularization on the post of the PGT (Chemistry) on the basis of 2004 CSB exam and LSB interview of May, 2004. In this regard counsel appearing for the respondent No. 3 says that since no appointment of the petitioner was made on the said post, therefore, the petitioner cannot seek any direction from this Court for her regularization. The contention of both the counsel appearing for respondents nos. 2 & 3 is that regularization should follow the appointment and it cannot be vise versa.

After giving my thoughtful and anxious consideration to the arguments advanced by counsel for the parties and perusal of the documents placed on record including the original record placed by respondent No.2 my conclusions are as follows:-

There is no doubt that respondent No. 3 school is being run by respondent No. 2 society, which is a society registered under the Societies Registration Act. It is also not in dispute that the respondent school although unaided, but is a duly recognized school, recognized by the Directorate of Education, Govt. of NCT of Delhi and provisions of Delhi School Education Act and the Rules framed thereunder are fully applicable to respondents No. 2 and 3. It is also not in dispute that the appointment of any teacher be it regular or ad hoc has to take place through the Selection Committee duly constituted in accordance with Rule 96 of the Delhi School Education Rules and unless the mandate of Rule 96 is followed in the selection of the petitioner, the appointment of the petitioner cannot be considered to be legal and valid on the said regular post of PGT (Chemistry). It also cannot be in dispute that the petitioner has no vested right of appointment or of regularization and the only right she has, is to be considered for an appointment on the regular post by the Selection Committee duly constituted under Rule 96 of the Delhi School Education Rules. In view of the said position, the precise question to

be answered by this Court is as to whether the petitioner was lawfully and validly selected in terms of Rule 96 of the Delhi School Education Rules or not. Before adverting to Rule 96 of the Delhi School Education Rules, it may be pointed out that respondent No. 2 has evolved an elaborate selection procedure for the appointment of teachers through the process of conducting Combined Screening Board (in short referred to as CSB) and Local Screening Board (in short referred to as LSB). The candidates who qualify the written test either LSB or CSB are given authenticated "score cards". This score card, issued by the respondents, gives details as to when the candidate has qualified a particular written test and for which post, including the percentage scored by the candidate in part A and B exams. The guidelines of respondent No.2 school for the selection of teachers through CSB and LSB are reproduced below:-

"CONDUCT OF COMBINED SCREENING BOARD (CSB) & LOCAL SCREENING BOARD (LSB)

- CSB is conducted once every year for the following categories:

➔ For fresh applicants of PGTs, TGTs & PRTs.
➔ For PGTs/TGTs/PRTs appointed earlier on ad hoc

basis.

➔ For teachers seeking higher grade i.e. PRT to TGT and TGT to PGT.

- LSB is conducted for PRTs.

Procedure in Outline

- CSB and LSB is conducted in three stages as under:-

➔ Written Test (200 Marks) -09 Jan 2005 (Sunday).
➔ Interview – (200 Marks) – PGT & TGT – 15 to 25 Feb every year. PRT-2nd/3rd week Mar & 3rd/4th week Jun.
➔ Teaching Skills (200 Marks) – for short listed candidates after interview.

Written Test

- Qualifying in the written test only makes you eligible for a panel interview. Reporting time 0900 hrs.

(a)	Part A (Common for PGT/TGT/PRT)	General Awareness, Mental Ability, English Comprehension, Educational Concept and Methodology	90 Min (0930 – 1100h)	PGT & TGT-80 Marks PRT 200 Marks	Objective type Q Paper using QMR
(b)	Part B (PGT & TGT)	Subject Specific (Less English & Hindi	2 hrs (1130-1330h)	120 Marks	Objective type Q paper using QMR

(c)	Part B Languages (PGT & TGT)	English, Hindi	2 hrs (1130-1330 h)	120 Marks	90 Mks Objective 30 Mks Descriptive

- To qualify you must score 50% in EACH Part 'A' and 'B' (PFT & TGT) and Part A ONLY(PRT). "

PGT/TGT Qualifying in Part A entitles you for a PRT 'Score Card'."

The CSB and LSB procedure are further defined in the guidelines and the same are also reproduced as under:-

> "12. **Category**. CSB will be for following category of teachers:-
>
> (a) For PGTs/TGTs who were earlier employed on Adhoc basis.
>
> (b) For fresh applications of PGTs/TGTs.
>
> (c)For upgradation of PRTs in TGTs and TGTs in PGTs.
>
> 13. CSB (interviews) will be conducted from 15-21 Feb. This will consist of two or more Boards per Command making clusters at Sub Area/Area/Div/Corps level. If a school is located in distant and isolated place, Comd. HQ may have a separate board exclusively for that school, e.g. Srinagar, Dinjan.
>
> 14. **Convening of CSB.** HQ Commands will be responsible for convening requisite no of CSBs based on their cluster of schools.
>
> 15. **Composition (CSB)**.

Presiding Officer	- Brig
Members	- All Principals, Eminent Educationalist, Subject Expert and Psychologist (desirable).

Notes:

1. All Principals of the cluster will be members, however, only two will sit in for any interview; Out of these two, one Principal must be of the school for which the particular candidate is being interviewed.

2. For CSB having only one school i.e. only one Principal the second Principal will be invited from any local school.

16. **Interview**. Each CSB will conduct the interview in one location. In the interview following aspects should be evaluated:-

(a) Confidence and ability to communicate

TEACHERS SELECTION PROCEDURE THROUGH CSB & LSB

(b) Knowledge and clarity of concepts.
(c) Ability to Contribute to extra circular activities.

(d) General Awareness.

(e) Computer literacy

(f) Experience

(g) Attitude

(h) Whether teacher has the requisite QR.

(i) Emotional balance and stability.

17. **Merit List & Weightages**

(a)	Written Test	- 200 marks
(b)	Interview	- 200 marks

18. A candidate must score 50% marks in written test (Aggregate of two papers) to qualify for interview. In interview also minimum qualifying percentage is 50. A candidate qualifying both in written test and interview will be approved. Merit list will be made taking both the written test and interview into consideration. Appointment will made based on the merit list. Those approved but not in merit will be kept in the reserve panel. In case an approved candidate does not join or a vacancy occurs in mid session, candidates from this panel may be appointed. The reserve panel will remain effective for current academic session only.

19. Format for preparing Merit Sheets as per Appx 'B'.

20. Appointing Selected Teachers. presiding Officer of CSB will send the Bd Proceedings to reach HQ Comds and respective Chairman by 05 Mar. HQ Comd will confirm the Proceedings by 15 Mar. Chairman may issue appointment letters wef 20 Mar even if confirmation from HQ Comd has not been recd.

LSB.

21. LSB will be for following category of teachers:-

(b) Primary Teachers (PRTs).

(c) Adhoc Teachers employed as TGTs or PGTs (those who could not be screened through CSB).

(d) Activity Teachers – Through LSB without written test.

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22. It will be conducted and composed similar to CSB, except Presiding Officer who may be of the rank of Colonel if necessary. Written paper will be prepared by SMC.

23. LSB will be conducted in the period May-Jul, after CSB has been completed. Screening will be organized by School Mgt. Committee. The procedure will consist of local advt., shortlisting written test, interview and appointment of teachers.

Other Instructions

24. TGTs selected through CSB will be on probation for 1 year, which may be extended upto maximum 2 years. Thereafter their appointment will stand confirmed.

25. A TGT, if qualified, may be upgraded to PGT after screening through a CSB for PGT selection (i.e. incl. written test).

26. Similarly a PRT, if qualified may be upgraded to TGT after screening through a CSB or TGT selection (i.e. incl written test).

27. A candidate who has been found fit by CSB will not have to appear for written test again if he/she applies for another school. However, they will be put through interview to finalise the inter se merit. In such cases their merit position in new school will be decided based on the marks of interview.

28. For those who are initially employed as Adhoc teachers after LSB and are subsequently selected by CSB, he/she can be considered for direct enrolment without going through CSB. This discretion rests with

SMC.

29. For those who are initially employed as Adhoc teachers after LSB and are subsequently selected by CSB, the Adhoc period will be considered as on probation. Even in such cases they will be under probation for a minimum period of 6 months as a regular teacher."

From the perusal of the aforesaid selection procedure devised by respondent No. 2 Society, it is evident that the Presiding Officer of the Board of CSB is a rank of a Brigadier, while that of the LSB is of a rank of a Colonel. It further differentiates that CSB selection procedure is for the appointment of PGT/TGT whether through fresh applications or for those who are already employed on ad hoc basis. The CSB is also for upgradation of primary teachers to the TGT and from TGT to PGT. Whereas, LSB is for the appointment of primary teachers, activity teachers and it is also meant for the candidates aspiring to become PGT and TGT who could not be screened through the CSB process. In the case of the petitioner it is not denied that she has qualified the CSB test in the year 2004 but as per the counsel for respondents no. 2 & 3 for selection to the post of PGT (Chemistry) she was required to qualify the CSB interview. However, in the

present case, the petitioner had qualified the LSB interview, which as per the respondents is prescribed for appointment of ad hoc teachers. However, as per the petitioner, there is no difference between LSB and CSB screening procedure, if the procedure is in due compliance with the provisions of Rule 96 of the Delhi School Education Rules. Although, sub-clause (c) of Clause 21 of the said Selection procedure is not correctly and aptly worded, as the same refers to ad hoc teachers already employed as TGT or PGT and as per the respondents the said sub clause deals with the fresh appointment of ad hoc teachers as TGT/PGT. Clause 29 of the said Guidelines dispel the said confusion to some extent as it states that the teachers, who are initially employed as ad hoc teachers after LSB, their ad hoc period will be considered as probation if they are subsequently selected by the process of CSB. Therefore, a combined reading of sub rule (b) & (c) of rule 21 and sub rule 28 of the Selection Procedure shows that the LSB procedure is meant for appointment of primary teachers and activity teachers and for ad hoc appointment of teachers on the post of TGT or PGT. With this position, the pertinent question would be

what is the sanctity of these guidelines and whether they are strictly being followed in practice or not

In the present case, the petitioner had qualified CSB written examination in the year 2004 by securing over all 53% while she was already in the ad hoc employment of the school w.e.f. 14th July, 2003 to 30th April, 2004. Thereafter, the petitioner was asked to appear for LSB interview, which was held on 24th May, 2004. The LSB, which was held on 24th May, 2004 was in fact comprised of all the necessary members as are required in accordance with Rule 96 of the Delhi School Education Rules. The meeting of this Board was presided over by Brigadier G.S. Rathor with a subject expert and the concerned heads of the schools, where the said regular vacancy for the post of PGT (Chemistry) existed. The perusal of the original record produced by respondent No.3 clearly shows that the petitioner was selected in the said LSB interview and the word 'selected' is duly mentioned against her name in the list of selected candidates. It is also noticed from this list of selected candidates that wherever the person is appointed on ad hoc basis the same is duly indicated in the said list

itself. The perusal of the record further shows that vide letter dated 21st June, 2004, respondent No.2 through their Director, AWES had duly conveyed the list of selected candidates to all members of the cluster with a request to issue appointment letters in favour of the selected candidates. Despite repeated queries raised by this Court respondents No. 2 and 3 could not give any sufficient explanation as to why the requisite appointment letter in favour of the petitioner was not issued by any of the schools despite the petitioner being duly selected through the said LSB interview. The only answer given by the counsel was that being the LSB interview, the said selection was also for ad hoc appointment and for regular selection on the post of PGT (Chemistry) the petitioner was yet to qualify the CSB interview. This contention of the counsel appearing for respondents No.2 and 3 appears to be fallacious and the same is not even supported by the said documents placed by them on record. Had the LSB interview been only for ad hoc appointment then the same could have been clearly indicated in the said letter. I also do not find any force in the submission of the counsel for the respondents that since the

petitioner did not score the cut off percentage as laid down by them, therefore, she was not called for CSB interview, which was held on 17th February, 2005. The petitioner had scored 53% in her CSB interview and counsel for the petitioner had drawn my attention to the final merit list of the candidates of Combined Screening Board held on 17.2.2007 which shows that in all, 15 candidates appeared in the said screening test and even a candidate, who had scored 54% was not only permitted to appear in the said interview, but was also recommended for appointment. In view of the said position the stand of respondents No. 2 and 3 gets totally belied. Earlier, the respondents had stated that only 12 candidates were permitted in the CSB held on 17th February, 2005, but the said final merit list shows participation of 15 candidates in the CSB interview. The said final merit list also shows that the candidate who had secured 54% was recommended for appointment. Although the cut off percentage as communicated to the petitioner was 62.5%. The participation of Ms. Renu Aggarwal in the said list of candidates evidently shows that the petitioner was illegally deprived of her chance to appear in the CSB

interview held on 17th February, 2005, although she was duly eligible to participate in the same. The petitioner was thus illegally deprived of her chance to appear in the CSB. As regards the selection of candidates in LSB interview held in 2004, the counsel for respondent No.2 was repeatedly asked by the Court to clarify the position of other candidates whose names appeared in the list of selected candidates against PGT posts of different disciplines. For instance, in the list of candidates at serial No. 9, Ms. Vandana Sharma had been shown selected for the post of PGT (Physics) and when asked whether the said candidate was still to undergo CSB interview or the said selection of LSB interview was enough to appoint her on the regular post of PGT (Physics), no proper answer was received. In the absence of any explanation by respondents No. 2 and 3, I have no option but to believe that the petitioner was duly selected by the Selection Committee on the said post of PGT (Chemistry), but still the petitioner was not appointed on the post of PGT (Chemistry) against the vacant post of PGT (Chemistry) at Dhaula Kuan. No plausible explanation has also been given by respondents No. 2 and 3 with

regard to the letter dated 21st June, 2004, which clearly shows that the appointment letter was to be issued by the members of the cluster in favour of the candidate found to have been selected in the LSB interview. I do not agree with the contention of the counsel appearing for respondents No. 2 and 3 that as far as Delhi was concerned the procedure as contemplated under Rule 96 of the Delhi School Education Rules was yet to be followed. In the case of unaided schools following category of members constitute a Selection Committee:-

> "96 (3)(b) in the case of an appointment of a teacher (other than the head of the school):
> (i)the Chairman of the managing committee or a member of the managing committee nominated by the Chairman;
> (ii) the head of the school.
> (iii) in the case of a primary school, a female educationist having experience of school education;
> (iv)in the case of an aided school, one educationist to be nominated by the Director, and one representative of the Director;
> (v)in the case of appointment of a teacher for any class in the middle stage or any class in the higher secondary stage, an expert on the subject in relation to which the teacher is proposed to be appointed, to be nominated, in the case of an unaided school by the managing

committee, or in the case of an aided school, by the Director."

In the selection which was carried out for LSB in 2004 all the members as envisaged under Rule 96 were duly present and, therefore, it cannot be said that still a fresh selection was to take place so as to comply with Rule 96 of the Delhi School Education Rules. As regards the other contention of the counsel for respondent No. 3 that the petitioner was required to qualify the CSB interview and not LSB interview for her selection on the post of PGT (Chemistry), I am of the view that the selection of the petitioner on the said post in the year 2004 although was for LSB, but the same fulfilled all the essential requirements of CSB interview. Moreover, if the contention of respondent No.3 is accepted, then, it was the decision of respondent No. 2 alone to have selected the petitioner against the regular post of PGT (Economics) after she was declared successful in the LSB interview. The respondents No. 2 and 3 now cannot turn around and say that the petitioner was yet to qualify the CSB interview. It may be relevant to mention here that the above

guidelines for conducting CSB and LSB proceedings have no statutory back up and the facts of the present case clearly show that these guidelines are not being strictly adhered to by respondent No.2 Society itself. When other candidates after qualifying LSB interview could be appointed against a regular post without insisting upon for qualifying CSB interview then how the respondent No.2 could treat the petitioner differently.

There is yet another fallacy in the arguments of counsel for respondents No. 2 and 3 as on the one hand they have deprived the petitioner from appearing in the CSB interview by taking a wrong stand of intimating the cut off marks as 62.5% while in fact candidates of much lower marks in CSB exam were entertained in the CSB interview of 2005, and, on the other hand, did not appoint the petitioner although having declared her successful in the year 2004 itself. The conduct of the respondent No. 2 in this entire process does not appear to be bona fide as the petitioner was deprived to appear in CSB interview in a most clandestine and mischievous manner.

As regards the prayer paragraphs of the petition, there is no

doubt that the prayer paras are not properly worded. The petitioner ought to have sought the relief of an appointment on the basis of her selection in LSB 2004 and not of regularization on the post of PGT (Chemistry). However, simply because of the said defect in prayer para, the relief to the petitioner cannot be denied, if otherwise such a relief is available and legally permissible. This Court while exercising powers under Article 226 of the Constitution of India can always mould reliefs and grant even those reliefs which are not specifically claimed so as to advance the cause of justice, therefore, even if it is taken that prayer (b) of the present petition is defective still this Court can grant appropriate relief to the petitioner.

I also do not find any force in the arguments of the counsel for respondent No. 2 that respondents No. 2 and 3 being not the State, the writ petition under Article 226 of the Constitution of India is not maintainable. Admittedly, respondents No. 2 and 3 are discharging important public functions, namely, imparting education to the children, therefore, to that extent the respondents are performing the functions of the State and recruitment of teachers to achieve the said

object is also in discharge of the public function by respondents No.2 and 3. The teachers who impart education have an element of public interest in the performance of their duties and in view of the settled legal position as authoritatively pronounced by the Supreme Court at **(2005) 4 SCC 649** entitled **Zee Telefilms Ltd. and Anr. vs Union of India & Ors.** the present writ petition is maintainable. It will be relevant to reproduce the following paragraphs from the judgment:-

> "31. Be that as it may, it cannot be denied that the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party may not have a relief by way of petition under Article 32. But that does not mean that the violator of such right would go scot-free merely because it or he is not a State. Under the Indian jurisprudence there is always a just remedy for the violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution, which is much wider than Article 32.

32. This Court in the case of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust vs. V.R. Rudani* has held:

"Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to 'any person or authority'. The term 'authority' used in the context, must receive a liberal meaning unlike the term in Article 12 which is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words 'any person or authority' used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party, no matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied."

33. Thus, it is clear that when a private body exercises its public functions even if it is not a State, the aggrieved person has a remedy not only under the ordinary law but also under the Constitution, by way of a writ petition under Article 226. Therefore, merely because a non-governmental body exercises some public duty,

> that by itself would not suffice to make such body a State for the purpose of Article 12. In the instant case the activities of the Board do not come under the guidelines laid down by this Court in *Pradeep Kumar Biswas case* hence there is force in the contention of Mr. Venugopal that this petition under Article 32 of the Constitution is not maintainable."

I also do not find any merit in the arguments of the counsel for the respondent that the petitioner has acquiesced and waived her right to claim the relief of appointment on the post of PGT (Chemistry) by accepting her contractual and ad hoc employment w.e.f. 1.7.2004 to 30.6.2005. The petitioner has duly clarified in the petition under what circumstances she was kept under a belief that she would be interviewed for CSB for her final selection on the regular post of PGT (Chemistry). The letter dated 16.2.2005 issued by the petitioner was due to her bona fide belief and, therefore, it cannot be said that by writing the said letter the petitioner can be debarred from claiming the relief of appointment on the post of PGT (Chemistry) in case of such a relief is otherwise legally available to her. Doctrine of estoppel does not come in the way of the present

facts and circumstances of the case.

In view of the foregoing position, I do not find applicability of the judgments cited by the respondents No.2 and 3 in support of their arguments. Ms.Avnish Ahlawat, Advocate appearing for respondent No.1 has placed reliance on Rule 96 of the Delhi School Education Rules for recruitment of a teacher in an unaided recognised school and the same has been discussed hereinabove.

In the light of the aforesaid discussion the respondents No.2 and 3 are directed to issue an appointment letter in favour of the petitioner for her appointment on the regular post of PGT (Chemistry) in Army Public School, Dhaula Kuan pursuant to her selection by the Local Screening Board in the meeting held on 24th May, 2004 as a result of which letter dated 21st June, 2004 was issued by respondent No.2 to the concerned schools of the cluster of respondent No.2 Society for appointment of the selected candidates.

With these directions, the writ petition is disposed of.

September , 2007 **KAILASH GAMBHIR**
rkr **JUDGE**

It is certified that the data has been sent today to the main server.